IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18307 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINOD @ GEBO RAMJI JUNGI KHARVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18307 of 2003

Ms Shaheen Qureshi for MR PREM H SINGH for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 30.10.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was the case against the petitioner that 13 cases under the Bombay Prohibition Act were registered against the petitioner before Kirtimandir police station, Porbandar as stated in grounds of detention at page 10 to the petition. It was also alleged against the petitioner that three witnesses, whose names were not disclosed, have rendered their statements against the petitioner.

3. On the strength of the said registered and unregistered cases, a detention order was passed against the petitioner.

The petitioner has challenged the above order stating that the offences registered against the petitioner were not sufficient for passing the order of detention. That the statements of unnamed witnesses were considered without due verification by the detaining authority. That therefore, the order of detention is illegal and therefore, it may be quashed and set aside.

4. On receipt of the petition, rule was issued and in response to the notice of rule, Ms. P B Sheth, learned AGP appeared on behalf of the respondents.

I have heard the learned Advocates for the parties and have perused the papers. The petitioner has been detained on the grounds of registration of the aforesaid cases under the Bombay Prohibition Act, 1949. Learned Advocate for the petitioner has argued that those offences would not lead to a threat to public order or public health. Learned AGP has relied upon a decision of Kanuji Zala v. State of Gujarat, 2000(4) GLR 3256 in order to argue that the registration of prohibition offences would lead to a threat to public health.

5. Again this decision was considered by this Court (Coram: Hon'ble Mr Justice N G Nandi) in Special C.A. No.16542/2003 dated 26.2.2004 wherein it has been clearly laid down that before coming to a finding that the alleged bootlegging activities of the petitioner would lead to a threat to public health, there must be credible material before the detaining authority for coming to the said finding. In the present case, we find that the detaining authority did not have credible materials and, therefore, the order of detention could not have been

passed against the petitioner. So far as the statements of unnamed witnesses are concerned, three witnesses have given statements against the petitioner. The statements given by those witnesses were verified by the Dy.S.P. concerned. However, the statements were not verified personally by the detaining authority. It therefore, cannot be said that the detaining authority has personally verified the correctness and genuineness as stated by the Dy.S.P., Porbandar City. In above view of the matter, the registered offence could not be the basis for passing the order of detention. Same way, without verification of the statements of the witnesses whose names have not been disclosed, the order of detention cannot be sustained. Consequently, the order is required to be quashed and set aside.

6. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 30.10.2003 passed by respondent No.2 herein be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp